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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001

May 5, 2009

Catherine O'Hagan Wolfe  
Clerk of the Court  
U.S. Court of Appeals, Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

Re: State of New York, et al. v. U.S. Nuclear Regulatory Commission, et  
al., Docket Nos. 08-3903-ag(L), 08-4833-ag(CON), 08-5571-ag(CON)

Dear Ms. Wolfe:

Please find enclosed:

- (1) Motion Information Form
- (2) Renewed Motion for Leave to Intervene by the State of Vermont and the Vermont Department of Public Service (original and 4 copies)
- (3) Affidavit of Uldis Vanags (original and 4 copies)
- (4) Amicus Brief of the State of Vermont and the Vermont Department of Public Service (original and 10 copies)
- (5) Certificate of Service
- (6) Notice of Appearance
- (7) Antivirus Certification Form.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca Ellis".

Rebecca Ellis  
Assistant Attorney General

Enclosures

MOTION INFORMATION STATEMENT

Caption [use short title]

Docket Number(s): 08-3903-ag (L), 08-4833-ag (Con), 08-5571-ag (Con)

State of New York v. United States Regulatory Commission

Motion for: Leave to Intervene

Set forth below precise, complete statement of relief sought:  
State of Vermont and the Vermont Department of Public Service seek leave to Intervene.

MOVING PARTY:

☐ Plaintiff ☐ Defendant  
☒ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]  
Rebecca Ellis, Assistant Attorney General  
Vermont Attorney General's Office, 109 State Street, Montpelier VT 05609  
(802)839-0515  
basay@atg.state.vt.us

OPPOSING PARTY: U.S. Nuclear Regulatory Commission

OPPOSING ATTORNEY [Name]: See service list

[name of attorney, with firm, address, phone number and e-mail]  
James Adler, Esq.  
Office of General Counsel, U.S. Nuclear Regulatory Commission  
OWFN Mailstop 15D21  
11555 Rockville Pike, Rockville MD 20852-2738  
James.Adler@nrc.gov

Court-Judge/Agency appealed from: Nuclear Regulatory Commission

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought? ☒ Yes ☐ No  
B. been obtained? ☒ Yes ☐ No

Is oral argument requested? ☐ Yes ☒ No  
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☒ No  
If yes, enter date

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Signature of Moving Attorney:

Date: 5/5/09

Has service been effected? ☒ Yes ☐ No  
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date:

By:

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE STATE OF NEW YORK, RICHARD  
BLUMENTHAL,  
ATTORNEY GENERAL OF  
CONNECTICUT, COMMONWEALTH OF  
MASSACHUSETTS

Petitioners,

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, UNITED  
STATES OF AMERICA

Respondents,

Docket Nos.

08-3903-ag (L)

08-4833-ag (Con)

08-5571-ag (Con)

**RENEWED MOTION FOR LEAVE TO INTERVENE**  
**BY THE STATE OF VERMONT AND**  
**VERMONT DEPARTMENT OF PUBLIC SERVICE**

On October 27, 2008, the State of Vermont and the Vermont Department of Public Service [collectively "State of Vermont"] filed a motion for leave to intervene as party petitioners. On November 3, 2008, the motion was "DENIED without prejudice to renew to merits panel. Meanwhile, Petitioner[s] may file amicus brief." The State of Vermont hereby renews its motion to intervene with the merits panel and is simultaneously filing an amicus brief. Vermont's motion is supported by an affidavit from Uldis Vanags, the Vermont State Nuclear Engineer with the Vermont Department of Public Service.

*Standard for Intervention.* In ruling upon intervention applications filed under Fed. R. App. P. 15(d), appellate courts have looked to the standard for intervention applicable in district courts under Fed. R. Civ. P. 24(a)(2). *See Sierra Club v. EPA*, 358 F.3d 516, 517-18 (7<sup>th</sup> Cir. 2004); *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994). The district court rule provides that intervention is proper "when the applicant claims an interest relating to the property or transaction which is the subject matter of the action and the applicant is so situated that the disposition of the action *may* as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Fed. R. Civ. P. 24(a)(2) (emphasis added). Vermont's motion meets both prongs of this test.

1. *Vermont has a direct and substantial interest in the NRC rulemaking challenge.* The petitioners in this case -- the State of New York, the Attorney General of Connecticut, and the Commonwealth of Massachusetts -- assert that new and significant information reveals that the NRC incorrectly characterized the environmental impacts of high-density spent fuel storage as "insignificant" in its Generic Environmental Impact Statement (GEIS) for the renewal of nuclear power plant licenses. The State of Vermont is home of Vermont Yankee, a nuclear power plant that is in the process of seeking license renewal, and as a result its interest in the outcome of these proceedings is equally strong as the party petitioners.

The Vermont Yankee Nuclear Power Station was designed and constructed in the early 1970s. When Vermont Yankee was built, it was anticipated that spent

nuclear fuel would be reprocessed, and the spent-fuel pool at Vermont Yankee was designed and constructed based on this assumption.

In 1976, however, the fear of nuclear weapons proliferation led to a presidential directive to suspend the commercial reprocessing and recycling of plutonium in the United States. Since 1976, Vermont Yankee has re-racked its spent fuel pool three times to allow storage of more spent fuel in the pool. The last re-racking at the Station, which used a high-density rack design, filled all of the available floor space in the pool. In fact, prior to the recent loading of five dry fuel storage casks onto the independent spent fuel storage installation, the fuel pool was so full that Vermont Yankee no longer had full-core discharge capability.<sup>1</sup> See *Massachusetts v. United States*, 522 F.3d 115, 122-23 (1<sup>st</sup> Cir. 2008) (describing use of high-density storage racks at Vermont Yankee). By the end of the current licensed operations in 2012, there will be over 3000 fuel assemblies generated by the plant in the fuel pool. If Vermont Yankee is relicensed, the packing of the fuel pool may not be abated for 20 years absent regulatory direction from the NRC.

The State of Vermont has a strong interest in assuring its residents that the impact of all new and significant information is considered during the relicensing of Vermont Yankee.

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<sup>1</sup> Full-core discharge capability refers to the ability of the spent fuel pool to accommodate all of the fuel rods located with the reactor and place them in the spent fuel pool.

2. *Vermont's interests cannot be adequately represented by the other party petitioners, for the following four reasons.*

a. As the state regulator of Vermont Yankee Nuclear Power Station, the State of Vermont has unique knowledge of the safety issues at Vermont Yankee that is not shared by other States. The Vermont Department of Public Service employs a state nuclear engineer who monitors plant activities and is generally on-site at least once a week. In addition, the Vermont Department of Public Service is a party in ongoing proceedings before the Vermont Public Service Board to renew Vermont Yankee's certificate of public good.

Vermont seeks, through intervention, to provide state-specific information to the Court regarding the impact of the NRC's rulemaking decision on Vermont residents. While the other States may attempt to provide the Court with information about Vermont, the State of Vermont is best situated to inform the Court regarding the health and welfare of Vermonters.

b. As a sovereign state, Vermont cannot rely on other States to protect the interests of Vermont residents. Vermont has a non-delegable duty to protect the interests of its residents. While the interests of the party petitioners may be aligned on some issues, Massachusetts's motion to transfer these proceedings to the First Circuit, and New York's opposition to that motion, demonstrate that the States have opposing interests as well.

c. Because of preemption considerations, the State of Vermont is unable to review radiological safety of license renewal at the State level. The State

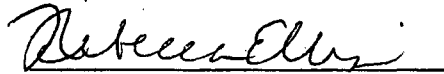
of Vermont can assure its residents that the risk of potential radiological exposure from accidents and terrorist attacks has been fully scrutinized only through participation in federal proceedings such as this.

d. Finally, if intervention is denied, Vermont would lose the right to appeal from an adverse decision of this Court. Accordingly, the State of Vermont's interests cannot be adequately represented by the other party petitioners, and Vermont respectfully asks that its motion to intervene be GRANTED.

Counsel for the State of Vermont has been authorized to represent that the following parties consent to Vermont's intervention in this action: John Sipos, counsel for the State of New York; Robert Snook, counsel for the Attorney General of Connecticut; Matthew Brock, counsel for the Commonwealth of Massachusetts; James Adler, counsel for the NRC; John Arbab, counsel for the United States; and Catherine Stetson, counsel for Entergy.

Dated: May 5, 2009  
Montpelier, Vermont

WILLIAM S. SORRELL  
ATTORNEY GENERAL



REBECCA M. ELLIS\*

BRIDGET ASAY

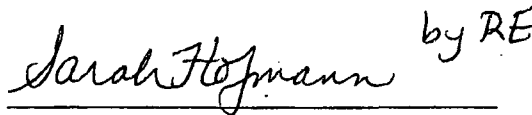
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\* Counsel of Record

 by RE

SARAH HOFMANN

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE STATE OF NEW YORK; RICHARD  
BLUMENTHAL,  
ATTORNEY GENERAL OF  
CONNECTICUT; COMMONWEALTH OF  
MASSACHUSETTS

Petitioners,

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA

Respondents,

ENTERGY NUCLEAR OPERATIONS, INC.  
et al.,

Intervenors-Respondents

Docket Nos.  
08-3903-ag (L)  
08-4833-ag (Con)  
08-5571-ag (Con)

**AFFIDAVIT OF ULDIS VANAGS ON BEHALF OF  
STATE OF VERMONT AND  
VERMONT DEPARTMENT OF PUBLIC SERVICE**

Pursuant to 28 U.S.C. § 1746, I declare the following to be true and correct to  
the best of my knowledge:

1. This declaration is based upon my personal knowledge, my  
experience, and review of documents over the course of my  
career.
2. I am the Vermont State Nuclear Engineer with the Vermont  
Department of Public Service. My responsibilities include

oversight of the activities at the Vermont Yankee Nuclear Power Station (Vermont Yankee) in particular and the nuclear power industry in general.

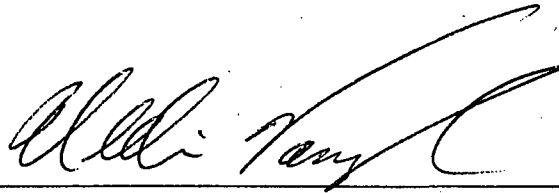
3. Vermont Yankee is a 650- megawatt boiling water reactor that began commercial operations in March 1972. It sits on approximately 125 acres on the banks of the Connecticut River in Vernon, Vermont.
4. Vermont Yankee has an NRC license to operate until March 21, 2012. Entergy Nuclear Vermont Yankee, LLC has applied for a license extension for an additional twenty years. There are also proceedings for twenty years of additional life pending before the Vermont General Assembly and the Vermont Public Service Board.
5. When Vermont Yankee was designed and constructed, the United States still approved the reprocessing of spent nuclear fuel. The spent fuel pool at Vermont Yankee was designed and constructed based on the assumption that the spent fuel would be reprocessed. The spent fuel pool was sized accordingly.
6. The Vermont Yankee spent fuel pool is a 26 foot by 42 foot, 39 foot deep pool of water that provides cooling and a radiation shield for the Vermont Yankee spent fuel. It sits on the equivalent of the fifth to 7<sup>th</sup> floors of the reactor building. The

spent fuel pool is made of thick reinforced concrete on its bottom and sides but has no cover.

7. When commercial reprocessing and recycling was discontinued in this country, Vermont Yankee had to re-rack its spent fuel pool to accommodate more spent fuel. The spent fuel pool at Vermont Yankee has been re-racked three times since 1976 to allow for more storage. The last re-rack used a high-density rack design that filled the available floor space in the pool.
8. Only through the recent removal of older fuel that was placed in five dry fuel storage casks and placed on an independent spent fuel storage installation, has Vermont Yankee been able to retain enough space in the fuel pool for the discharge of the fuel in the reactor core into the spent fuel pool.
9. The current capacity of the spent fuel pool is 3355 spent fuel assemblies. By the end of the current license period, there will be over 3000 fuel assemblies generated by the station in the fuel pool. Absent an NRC directive, the current owner has no incentive to put more fuel assemblies into dry cask storage.
10. By the end of the current license and heading into a license renewal period, the spent fuel pool at Vermont Yankee will be very full.

11. Because of the high-density racking system that is necessary to hold all of this spent fuel, there is little room for air circulation in the event water drains completely or partially out of the spent fuel pool.
12. Based on the National Academies of Science's 2006 report on the *Safety and Security of Commercial Spent Fuel Storage*, I am concerned that this issue should be examined further by the Nuclear Regulatory Commission for both the possibility of terrorist attack and the likelihood of a zirconium fire. Only through a full-vetting of these issues will the NRC rules and regulations reflect the best science and reality as we know it today in the post 9/11/01 era.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Uldis Vanags', written over a horizontal line.

Uldis Vanags, Vermont State Nuclear Engineer